

American Bankers Association
American Bankers Insurance Association
American Gas Association
American Hotel and Lodging Association
American Public Power Association
American Resort Development Association Resort Owners' Coalition
American Society of Association Executives
America's Community Bankers
Associated Builders and Contractors
Associated General Contractors of America
Association of American Railroads
Association of Art Museum Directors
The Bond Market Association
Building Owners and Managers Association International
Boston Properties
CCIM Institute
Chemical Producers and Distributors Association
Commercial Mortgage Securities Association
Edison Electric Institute
Electric Power Supply Association
The Food Marketing Institute
General Aviation Manufacturers Association
Helicopter Association International
Hilton Hotels Corporation
Host Marriott
Independent Electrical Contractors
Institute of Real Estate Management
International Council of Shopping Centers
The Long Island Import Export Association
Marriott International
Mortgage Bankers Association of America
National Apartment Association
National Association of Home Builders
National Association of Industrial and Office Properties
National Association of Manufacturers
National Association of REALTORS®
National Association of Real Estate Investment Trusts
National Association of Waterfront Employers
National Association of Wholesaler-Distributors
National Basketball Association
National Collegiate Athletic Association
National Council of Chain Restaurants
National Football League
National Hockey League
National Multi Housing Council
National Petrochemical & Refiners Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National Rural Electric Cooperative Association
The New England Council
New York City Partnership
Office of the Commissioner of Baseball
Public Utilities Risk Management Association
The Real Estate Board of New York
The Real Estate Roundtable
Six Continents Hotels
Society of American Florists
Starwood Hotels and Resorts
Taxicab, Limousine & Paratransit Association
Travel Business Round Table
UJA-Federation of New York
Union Pacific Corporation
U.S. Chamber of Commerce
Westfield

CIAT COALITION TO INSURE AGAINST TERRORISM

insure against terrorism.org

May 21, 2003

Mario Ugoletti
Deputy Director
Office of Financial Institutions Policy
Department of the Treasury

Martha Ellett
Attorney-Advisor
Office of the Assistant General Counsel (Banking & Finance)
Department of the Treasury

Attn: Terrorism Risk Insurance Program
Public Comment Record
Room 3160, Treasury Annex
1500 Pennsylvania Ave., N.W.
Washington, DC 20220
(Submitted via electronic mail to: triacomments@do.treas.gov)

Re: April 18 TRIA Comments, Interim Final Rule (31 CFR Part 50)

Dear Mr. Ugoletti and Ms. Ellett:

The following comments are submitted on behalf of the Coalition to Insure Against Terrorism ("CIAT"). CIAT is a broad-based coalition of sixty-four (64) trade and professional associations, from varied sectors of the U.S. economy, which came together last year to advocate passage of the legislation ultimately enacted as Terrorism Risk Insurance Act of 2002, Pub. Law 107-267 ("TRIA"). CIAT remains active in the Government's implementation of TRIA and in monitoring developments at State and local levels that may affect the ultimate availability and affordability of insurance against terrorism perils. On March 31, 2003, CIAT submitted detailed comments on the first (February 28) Interim Final Rule under the Program.

CIAT again commends Treasury for the prompt implementation of the TRIA Program. CIAT also appreciates the further opportunity, at this juncture, to comment on the second Interim Final Rule, which addresses the disclosure and mandatory availability requirements to which insurers are subject under the Program. The emphasis now should be on making certain that TRIA lives up to expectations which both Congress and stakeholders had last year. In this regard, CIAT members are concerned by Treasury's interpretation of the "make available" requirement. Specifically, section 50.23(b) ("Limitation on

types of risks”) of the Interim Final Rule expressly defers to State law for determining whether an insurer may exclude “certain types of losses, such as nuclear, biological or chemical events,” and yet still comply with the “make available” imperative of TRIA Section 103(c)(1).

We believe the intent of the TRIA legislation was to put policyholders back to the level of coverage (or its availability) that existed prior to September 11, 2001. Certainly, the Act itself states that the purpose of the temporary Federal “shared compensation” program was to:

“protect consumers by addressing *market disruptions* and ensure the *continued widespread availability* and affordability of property and casualty insurance for terrorism risk. . . .”

TRIA Section 101(b)(1)(*emphasis added*)

Allowing, as Treasury does, the availability requirements of TRIA to be satisfied with offers of coverage that explicitly exclude any act of terrorism arising from biological or chemical exposure certainly does not achieve a restoration of the previously existing coverage, even at higher premium rates. Although most commercial policyholders had nuclear exclusions in their property and casualty policies prior to September 11th, they did not have biological or chemical exclusions. Many commercial policies may have had some form of “pollution” exclusions, but since the enactment of TRIA the market has seen the emergence of absolute biological and chemical exclusions unquestionably intended to deny coverage of terrorist events. With Treasury simply following State laws as to whether such exclusions were permitted without making an independent determination of the adequacy of such qualified offers under TRIA section 103(c)(1), the value of the statute’s mandatory availability requirement has been substantially diminished. By any measure, the “market disruption” in a material area of “terrorism risk” has effectively not been addressed, nor can it be said that “widespread availability” has been “ensure[d]” for insurance against potentially some of the most meaningful terrorism risks.

Previous comments in this Interim Final Rule docket have documented the relatively limited purchase of terrorism insurance since enactment of TRIA.¹ In part, the limited participation may be a function of price. However, to a substantial degree it may also be because the biological/chemical perils generally are not being covered even in the TRIA-supported insurance

¹ For example, the Council of Insurance Agents and Brokers (CIAB), whose members are the top-tier of the nation’s insurance brokers and collectively write 80 percent of the commercial property/casualty premiums annually, released a survey on March 24, 2003 which provides the first national sampling of the cost and availability of terrorism coverage and tends to confirm these views.

Mr. Mario Ugoletti and Ms. Martha Ellett

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packages on offer (as well as the fact that domestic (non-certified) acts of terrorism are also excluded). These are important gaps which reduce the value or utility of the insurance coverage.

CIAT urges Treasury to examine carefully its authority to determine the adequacy of “availability” offers without merely deferring to State-permitted policy forms. CIAT would be pleased to work with the Program staff to develop any specific criteria in response to these comments.

Respectfully submitted,

Martin L. DePoy

Steering Committee Coordinator

The Coalition to Insure Against Terrorism

Vice President - Government Relations

National Association of Real Estate Investment Trusts